

REMARKS

Claims 1 - 40 are present in the subject application.

In the Office Action dated March 31, 2010, the Examiner has indicated that claims 18, 35, and 40 contain patentable subject matter, has rejected claims 1 - 3, 8 - 15, 19 - 20, 25 - 32, and 36 - 37 under 35 U.S.C. §102(e), and has rejected claims 4 - 7, 16 - 17, 21 - 24, 33 - 34, and 38 - 39 under 35 U.S.C. §103(a). Favorable reconsideration of the subject application is respectfully requested in view of the following remarks.

The Examiner has rejected claims 1 - 3, 8 - 15, 19 - 20, 25 - 32, 36, and 37 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0243765 A1 (Schrader et al.), has rejected claims 4 - 7, and 21 - 24 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of Applicant's allegedly admitted prior art, has rejected claims 16, 33, and 38 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of U.S. Patent Application Publication No. 2001/0029166 A1 (Rune et al.), and has rejected claims 17, 34, and 39 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of the Rune et al. publication, and further in view of Ohta et al., "An Adaptive Multihop Clustering Scheme for Highly Mobile Ad Hoc Networks."

These rejections are respectfully traversed. As indicated in the prior amendment, the only date prior to the subject application filing date for the Schrader et al. publication is the filing date of the '388 provisional application.

However, in order to provide a basis for the rejection, the '388 provisional application must support the subject matter relied upon to make the rejection in compliance with 35 U.S.C. §112, first paragraph. See M.P.E.P. §2136.03(III). The Examiner rejected each of independent 1, 19, and 36 based on the Schrader et al. publication. In particular, the Examiner relied upon the flow chart of Fig. 3 and expressly referred to reference numerals 25 and 26, and Paragraph 0095 describing that figure. However, the '388 provisional application does not include Fig. 3 from the Schrader et al. publication, nor a corresponding description of steps 25 and 26 from the flow chart of Fig 3. Thus, the subject matter relied upon by the Examiner is not supported by the '388 provisional application and, therefore, does not predate the subject application filing date.

The Examiner takes the position in the Office Action that pages 23 to 38 of the '388 provisional application clearly discloses the "joining two meshes of piconet", which corresponds to paragraph 0091 of the Schrader et al. publication. However, the Schrader et al. publication discloses that two networks must join/merge into one mesh network when any MS from an existing mesh network comes within range of an MS from another mesh network, or if a single US comes within range of two separate mesh networks (e.g., See Paragraph 0092). Fig. 3 and reference numerals 25 - 26 of the Schrader et al. publication relate to the former case where an MS of an existing mesh network comes within range of an MS from another mesh network (e.g., See Paragraphs 0007 ("For the first case, a member from one mesh network directly communicates with the member from the other network, as shown in Fig. 3"); and 0092 ("The

following is the sequence of actions that occur in adding Network 2 to Network 1, when a member of Network 1 comes within range of Network 2").

In contrast, the pages of the '388 provisional application relied upon by the Examiner relate to the latter case where an inactive node detects beacons from two separate and non-connected piconet meshes (e.g., See Page 23, lines 19 - 21 ("Second, an inactive node (an inactive piconet) is activated in a location where it detects beacons from two separate and non-connected piconet meshes. This is the more complex case, described here.").

The Examiner cited specific portions (reference numerals 25 and 26) of Fig. 3 to reject the independent claims. It is this specific subject matter which must be supported by the '388 provisional application as required by M.P.E.P. §2136.03(III). Since the subject matter of the Schrader et al. publication relied upon by the Examiner is not supported by the '388 provisional application as discussed above, the rejections are improper.

In addition, Applicants submit herewith a Declaration under 37 C.F.R. §1.131 to antedate the Schrader et al. publication. The Declaration is being submitted as a precautionary measure with respect to the erroneous position taken in the Office Action, and further disqualifies the Schrader et al. publication from the rejections.

Accordingly, since each of the rejections within the Office Action is based on the Schrader et al. publication, these rejections are improper, and claims 1 - 40 are considered to be in condition for allowance.

In view of the foregoing, Applicants respectfully request the Examiner to find the application to be in condition for allowance with claims 1 - 40. However, if for any reason the

AMENDMENT IN RESPONSE TO OFFICE ACTION MAILED MARCH 31, 2010
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Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicants hereby petition for any extension of time that may be necessary to maintain the pendency of this application. The Commissioner is hereby authorized to charge payment of any additional fees required for the above-identified application or credit any overpayment to Deposit Account No. 05-0460.

Dated: *06/29/10*

Respectfully submitted by:

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